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MT-720
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United States Department of the Interior

BUREAU OF RECLAMATION

Great Plains Region
Montana Area Office

P.O. Box 30137
Billings, Montana 59107-0137



TAKE PRIDE
IN AMERICA

EXHIBIT 2
DATE 1.19.07
HB 6, 8.

MAR 7 2005

Kelly Christenot
Box 582
Chester, MT 59522

Subject: Bureau of Reclamation Administrative Costs for the Proposed Chester Irrigation Project

Dear Mr. Christenot:

The Bureau of Reclamation received your letter dated November 3, 2004, requesting estimates of our administrative costs related to negotiating and entering into a long term water service contract for water from Lake Elwell. The cost estimates are based on information concerning the proposed project available to Reclamation at the time they were prepared and could be revised once the scope of the potential project is better defined.

Our understanding of the basic parameters regarding this project are: (1) this would be a "new" project; (2) administrative costs include meetings, correspondence, consultations, studies, field work, data collection, reports, permits and other activities necessary to comply with all applicable federal, tribal, state and local laws, regulations and policies; (3) it would include delivery of about 80,000 acre-feet from Lake Elwell for agricultural irrigation to about 40,000 acres; (4) the project would require a long term water service contract and construction of a pumping station(s) and water conveyance/delivery system; and (5) most of the project lands are currently dry-farmed for small grains, primarily wheat.

Reclamation has multiple costs associated with the negotiation of long term water contracts. The costs can be broken into two general categories: costs associated with compliance with NEPA (National Environmental Policy Act) and related federal laws and policies; and costs associated with the actual negotiation of the contract. Compliance with NEPA and related federal laws and policies is required before a long term water service contract can be executed by Reclamation.

Reclamation has compiled a preliminary cost estimate to complete the process for negotiating a long term water service contract for the proposed irrigation project. This preliminary work effort assessment is to provide a description of the environmental compliance and contractual requirements, along with a general estimated cost range that could be associated with the development of this project. Please see the enclosed document titled, "Preliminary Administrative Costs for Environmental Compliance and Contractual Requirements Related to Development and Operation of the Chester Irrigation Project," for a more detailed description of

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the activities. A summary table of the activities and costs is also provided in the enclosure. The costs are based on other similar environmental work and related water service contracts.

Typically the costs associated with the negotiation of long term water contracts are borne by the beneficiaries of the project and should be included in the estimates of the overall project development cost.

If you have any comments or questions, we can arrange a meeting to clarify these costs and activity descriptions. Please contact Brent Esplin at 406-247-7489 for further information.

Sincerely,

DAN JEWELL

Dan Jewell
Montana Area Office Manager

Enclosure

bc: GP-3100, GP- 4200

MT-100, MT-200, MT-221, MT-231, MT-700, MT-720, MT-730, MT-750

WBR:SHellekson:daldrich:3/4/05:406-247-7306

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Water Service

Lower Marias

Preliminary Administrative Costs for Environmental Compliance and Contractual Requirements Related to Development and Operation of the Proposed Chester Irrigation Project

National Environmental Policy Act (NEPA)

This project would likely involve potentially significant environmental issues and impacts such as the effects of the project on tribal water rights, hydrology, reservoir-related recreation, endangered fishes downstream from Tiber Dam, and social-economic effects. As such, the proposal would likely constitute a federal action significantly affecting the quality of the human environment and an environmental impact statement (EIS) would be necessary. Several other entities would likely be involved as cooperating agencies during preparation of the EIS. The cost of an EIS of the scope and complexity needed for this project would likely be \$750,000 to \$2.5 million and take 3-5 years to complete (from issuance of Notice of Intent until a Record of Decision is approved).

Endangered Species Act (ESA)

The depletion of water and flow modification in the Marias River, a tributary to the upper Missouri River, may affect the bald eagle and pallid sturgeon and will likely trigger the need to consult with the Fish and Wildlife Service pursuant to Section 7(a)(2) of the Endangered Species Act. These parameters, and possibly others, should be considered early in the planning process and, where appropriate, included in engineering and hydrologic evaluations. The cost for this activity would be \$50,000 to \$100,000.

Cultural Resources (National Historic Preservation Act - NHPA)

The cost estimate for cultural resource work for the proposed project ranges from \$67,000 to \$100,000. The estimates are based on a proposed irrigated area of 40,000 acres and a total of 66 miles of pipelines and/or canals. The estimates include field inventory work by a consultant, and Reclamation staff time for review and Section 106 consultation. This cost estimate does not include any mitigation costs.

Clean Water Act (CWA)

A permit(s) will likely be required from the Corps of Engineers (Corps) under Section 404 of the Clean Water Act for discharges of fill material into waters of the United States, including wetlands. A Section 402 permit (NPDES) may also be needed. We recommend inviting the Corps and other agencies to participate as cooperating agencies early during the NEPA compliance process. It may also be helpful to understand early in the environmental compliance process that jurisdictional wetlands subject to regulation under Section 404 may be a relatively small subset of the range of wetlands identified during the FWCA compliance process. While some wetlands may not be jurisdictional under Section 404, potential impacts to all wetlands must be considered for compliance with NEPA and FWCA. The estimated cost for CWA permitting activities could be \$25,000 to \$50,000.

Fish and Wildlife Coordination Act (FWCA)

The proposed project would modify a waterbody (i.e. Tiber Reservoir and Marias River); therefore Reclamation is required to comply with the FWCA. The FWCA ensures that effects on, and enhancement opportunities for, fish and wildlife resources receive equal consideration

during project planning and development. Proper compliance with the FWCA requires early coordination and involvement of the Fish and Wildlife Service and Montana Fish, Wildlife and Parks. Effects on wetlands, floodplains and riparian habitat, and migratory birds required by other laws, treaties, or executive orders can be identified during the FWCA compliance process. A separate Coordination Act Report may be needed or the required information could be incorporated into the project EIS. The cost of this activity is included in the NEPA cost estimate.

Environmental Mitigation

The project would likely require certain mitigation measures to be implemented, although the specific nature of those measures is not known at present time because the specific project impacts have not been identified. The cost of mitigation measures for projects of similar magnitude typically are about one percent of the total construction cost (e.g. \$15 million construction cost = \$150,000 mitigation cost). These costs are separate from the NEPA cost. The cost for this activity could be \$100,000 to \$200,000.

Memorandum of Understanding Agreement (MOU)

This agreement will describe the roles and responsibilities of Reclamation, CIP, and other involved parties. The agreement may address the background, purpose and objectives of the project, scope of work, funding source, payment for services, terms of the agreement, and identification of key personnel. The administrative cost associated with drafting and executing this agreement would be approximately \$2,000 to \$4,000.

Public Notifications

There are a number of required public notices which are required during any federal water project contracting process. The intent to contract and/or negotiate a water contract must be published quarterly in the federal register from the time the action begins until complete and public notices for NEPA scoping meetings are also included in the costs. Any and all negotiation sessions must be held in public with appropriate advance notice provided to the public through publication notices. Once a draft contract is agreed upon the contract must be made available to the public for comment at least 60 days prior to execution of the contract. Copies must be made and mailed to all who request. Then all comments received must be noted and addressed if significant. The cost for this activity would be \$2,000 to \$8,000.

Technical Meetings

Meetings are necessary to discuss many areas of consideration related to the potential contract. Meetings are held to identify the contractors' needs, report progress and the results of any technical studies and activities which are conducted to provide information for the process, possible third-party impacts. Other critical elements are water operation considerations and responsibilities and water assessment needs (i.e. crop, municipal and industrial, environmental, state and other federal agencies, recreation, fish and wildlife, and Tribal and other water obligations). The cost for this activity would be \$20,000 to \$40,000.

Research/Collection

The research and data collection is an on going process during the contracting process. In order to complete the legal and policy requirements research must be conducted and data must be collected concerning multiple issues including, but not limited to legal, environmental,

engineering, hydrologic, economic, finance, use analysis, and benefic studies. Generally a hydrologic model is built to consider various alternatives for water demands and historic evaluation. The cost for this activity would be \$10,000 to \$20,000.

Ability to Pay

Ability-to-pay studies assess the financial standing of an irrigation district. They are completed after a farm level payment capacity study is done. Payment capacity is defined as the per-acre residual net farm income for a representative farm in the district. Farm-level revenues, expenses, and allowances for returns to investment, family labor, and management are accounted for in this process. Thus, payment capacity is the amount that representative irrigators can pay for water, including construction and annual operating costs. Payment capacity is expanded to the district level by multiplying per-acre payment capacity by the number of assessed acres.

Ability-to-pay is defined as the aggregated payment capacity amount minus existing District obligations, operation, maintenance, and replacement (OM&R) costs, power costs, and reserve fund requirements. If the district has other documented sources of income, they may also be incorporated into the analysis.

Ability-to-pay studies consider the District as a business entity with associated revenues and expenses. On the revenue side of the ledger, the District generates income by collecting tolls from farmers within the District. These tolls may take the form of water assessments, account charges, or tax levies collected by the county assessor. The payment capacity determines revenues available to the District from farmers. On the expense side, the District as a whole incurs expenses in the operations and maintenance of the reservoirs, canals, laterals, and drains so that irrigation water may be delivered to individual farms.

Financial information is collected to evaluate existing and projected sources of revenue and financial obligations of the District. This information comes from published and/or audited financial reports. Financial records also provide other obligations of the District such as bank loans, bond payments, etc. The cost for this activity would be \$10,000 to \$20,000.

Basis of Negotiation (BON)

Long-term water contracts for federal project water are contracts between the United States of America and the contractor. Authorization must be granted in order to be able to negotiate a water contract for the use of federal project water. This approval process is called the Basis of Negotiation (BON).

Approval must receive review approval from the Denver Office of Policy, the Washington Solicitor's Office, The Washington Office of Policy Director, Operations Director, & Chief of Staff, The Assistant Secretary Water and Science, before final approval is granted by either the Secretary or Commissioner, which ever is applicable.

The BON is a formal memorandum requesting approval for the Commissioner or Secretary to negotiate and execute a contract. The BON formulates the appropriate terms and conditions of a proposed contract, including but not limited to, contract authorities, payment arrangements, facts and information provided in appropriate planning reports, environmental documentation or other

pertinent documents to delineate negotiating strategy and non-negotiable terms and conditions for the proposed contract. The primary purposes of providing information in the BON are:

1. Set forth the negotiating strategy and position of all direct and indirect parties to the contract.
2. Provide background information and justification for these positions.
3. Serve as an internal historical record for the particular contract activity. The approval memorandum for the BON serves as the official record.

The cost for this activity would be \$5,000 to \$10,000.

Negotiations

All negotiation sessions must be advertised in advance and held in front of the public. A designated team from Reclamation will meet with a designated team representing the contractor to discuss the terms of the contract. The government's team must negotiate within the boundaries of the approved BON. The cost for this activity would be \$20,000 to \$80,000.

Contract

A draft contract must be made available to the public for a 60 day public comment period when an agreement is reached. During this public review time the contract is reviewed internally by management, a contract specialist and the field solicitor's office. This document must be completed in accordance with regulation, policy, law and the BON. The cost for this activity would be \$8,000 to \$16,000.

• Land Classification & Drainage

The current policy states that if there are no federal funds expended (i.e. no repayment obligation) in providing the contracted water, then there is no need for a land classification or drainage investigation. If federal funds are expended (repayment obligation), the cost of land classification and drainage investigation will depend on the number of acres; time required to complete the work and the availability of people for the classification and investigation. The evaluation would include specification development (utilizing economic and drainage cost analysis); field work; lab analyses; drafting costs; and report writing. The cost estimate for the land classification would be in the range of \$240,000 to \$480,000 only if a repayment contract is required. Although information from drainage investigations is incorporated into land classification, it is a separate field of study and a significant part of irrigation project investigations. The cost for a drainage investigation, if federal funds are expended, is estimated in the range of \$300,000 to \$600,000.

Reclamation's Administrative Costs for the Proposed Chester Irrigation Project			
Activity	Task(s)	Cost Range (thousands)	Cost Range per Acre*
NEPA and Related Federal Law and Policy Compliance Activities			
NEPA Compliance	Prepare Environmental Impact Statement	\$750 to \$2,500	\$18.75 to \$62.50
ESA	Consultation (informal/formal) with U.S. Fish & Wildlife Service	\$50 to \$100	\$1.25 to \$2.50
Cultural Resources	Field surveys & inventory, review, Section 106 consultation	\$67 to \$100	\$1.68 to \$2.50
Clean Water Act	Prepare Section 402 & 404 permit applications	\$25 to \$50	\$0.63 to \$1.25
Fish and Wildlife Coordination Act	Meetings, coordination w/USFWS, document review, development of conservation measures for fish/wildlife resources	Included in NEPA costs	-
Environmental Mitigation	Implement required mitigation measures	\$100 to \$200	\$2.50 to \$5.00
Related Contract Negotiation Activities			
MOU Agreement	Describe the roles and responsibilities of Reclamation, CIP, and other involved parties	\$2 to \$4	\$0.05 to \$0.10
Public Notifications	Publish required legal notices	\$2 to \$8	\$0.05 to \$0.20
Technical Meetings	Discuss areas of consideration related to the potential contract	\$20 to \$40	\$0.5 to \$1.00
Research/Collection	Data being collected for legal, engineering, hydrologic, economic, etc. issues	\$10 to \$20	\$0.25 to \$0.50
Ability to Pay	Assess the financial standing of the irrigation district	\$10 to \$20	\$0.25 to \$0.50
Basis of Negotiation	Approval process for a long-term water contracts for federal project water	\$5 to \$10	\$0.13 to \$0.25
Negotiations	Discuss the terms of the contract	\$20 to \$80	\$0.50 to \$2.00
Contract	Contract review by Reclamation	\$8 to \$16	\$0.20 to \$0.40
Land Classification & Drainage	There is no need for a land classification or drainage investigation if no federal funds are expended or for a water service contract	-	-
Totals		\$1,069 to \$3,148	\$26.73 to \$78.70

*The cost per acre is based on a total of 40,000 acres